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| <div style="display: flex; justify-content: space-between;"> E.O. 11692: GDS </div> | |
| <div style="display: flex; justify-content: space-between;"> SUBJECT: SHUM, UY </div> | |
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| <div style="display: flex; justify-content: space-between;"> SUMMARY. Over the last nine months, we have conducted more than 150 interviews with persons who have come to the Embassy to discuss the plight of 100 relatives who are Uruguayan political prisoners or "disappeareds". This report analyzes these 100 walk-in cases, with information up to mid-May, as to type of case, political affiliation of the subjects, and their legal status and treatment under the Uruguayan military justice system. Because this limited sample deals with only 100 of several thousand prisoner cases, it may not accurately depict the entire population of detainees and "disappeareds". The picture of GOU behavior portrayed may actually be darker than is deserved. Nevertheless, we believe the analysis does reveal significant trends and gives some insight into the GOU's anti-subversive activities during this decade. </div> | |
| <div style="display: flex; justify-content: space-between;"> Uruguayans arrested in Uruguay constituted the major part of the walk-ins, although about 13% of the cases dealt with persons who had disappeared either in Uruguay or Argentina. A breakdown of cases by political affiliation reveals that almost all cases prior to 1973 involved MLN-Tapamaros; that there was an apparent hiatus in 1973-74 during which the GOU established and put in place its present internal security legal machinery; and that the anti-subversion campaign starting in 1975 focused on suspected communist organizations and leftist fringe groups. Almost one in five cases involved a person who had no known or admitted political affiliation or activity. </div> | |
| <div style="display: flex; justify-content: space-between;"> Attachment: Walk-in Interview Form </div> | |
| <div style="display: flex; justify-content: space-between;"> Date: FORM 10-64 DS-323 </div> | |
| <div style="display: flex; justify-content: space-between;"> Initials: POL: Wood: cp/mis </div> | |
| <div style="display: flex; justify-content: space-between;"> Classified by: 5-22-78 320 </div> | |
| <div style="display: flex; justify-content: space-between;"> Classifications: POL - JUYoule/DGShaw POL:RMarrero DAO:Capt. Davis </div> | |

ARGENTINA PROJECT (S200000044)

U.S. DEPT. OF STATE, A/RPS/IPS

Margaret P. Grafeld, Director

(X) Release () Excise () Deny

Exemption(s):

Declassify: () In Part (X) In Full

() Classify as () Extend as () Downgrade to

Declassify on Reason

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Analysis of the Uruguayan military justice system as used to arrest and prosecute accused subversives has led to the following conclusions: The preliminary interrogation period usually lasts for an extended period of time, in which the prisoner is held incommunicado and even his family is denied knowledge of his whereabouts. This is the most dangerous period because a prisoner is still outside the minimal safeguards of the system. The incidence of mistreatment was apparently highest in the period 1975-76, although the high number of still unresolved disappearances in 1977 will probably bring that year's index of mistreatment into line with previous years when the fate of the "disappeareds" is finally known. More than half of the accused subversives were charged with the crimes of "membership in a subversive organization" or "aiding a subversive organization". (These crimes and their attendant penalties were established by decree only in 1973.) Finally, only about one in four cases of arrest since 1972 has received even a preliminary sentence, although there are indications that military courts are catching up with their backlog.

Analysis by date of arrest/disappearance gives the following yearly profiles:

1972 -- heavy GOU campaign against the remaining Tupamaros, with relatively short sentences based on Ordinary Penal Code violations;

1973-74 -- few arrests, probably because of the revamping of the Uruguayan internal security institutions, based on changes in the Military Penal Code;

1975 -- refocusing of effort against communist organizations and Frente Amplio, a popular-front umbrella group, with widespread mistreatment of prisoners;

1976 -- fewer arrests/disappearances of communist party members, with more emphasis on leftist unions and minor subversive groups; continued mistreatment;

1977 -- almost complete halt to arrests of communist party and union members; high number of disappearances (probably reflecting detainees still being held incommunicado); high percentage of cases with little or no background of political activity;

1978 -- although data on 1978 arrests/disappearances has not been included in the numerical analysis (because only three late-March cases have been reported), one conclusion stands out: there have been markedly fewer arrests reported in 1978 by walk-ins, seemingly indicating a slackening in the GOU's anti-subversive campaign.

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I. INTRODUCTION

Embassy Montevideo's human rights walk-in program began last fall in the wake of Assistant Secretary Todman's widely publicized visit here in August 1977. By October, the Embassy had developed a consistent interview format. ^{sample appended} By mid-May it had assembled information on an even hundred individuals. The walk-in program has encountered three types of cases: Uruguayans "disappeared" in Argentina, about whom further information is rarely ever acquired; Uruguayans "disappeared" in Uruguay, about whom further information frequently comes to light; and, the majority (77%), Uruguayans who are known to be detained in Uruguay.

The GOU's war against internal subversion appears to have been waged in two stages: the 1967-72 battle against the Tupamaros, and a subsequent campaign, begun in 1975 and still continuing, against Communist groups, leftist radicals and assorted other political activists. The vast majority (87%) of cases reported to the Embassy by walk-ins were arrested or "disappeared" in the second wave, with only two cases involving Tupamaros having had their origin after 1975. Chart 1, below, clearly illustrates the division between these waves. In July 1973, the GOU enacted its present anti-subversion laws and appears to have spent the rest of 1973 and all of 1974 putting its security machinery in place. Thus, only two percent of our cases are attributable to this watershed period.

CHART 1 - Embassy Walk-In Cases, by Year
and Type of Detention

| <u>Type of Case</u> | <u>1972</u> | <u>1973</u> | <u>1974</u> | <u>1975</u> | <u>1976</u> | <u>1977</u> | <u>Total</u> |
|----------------------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| Disappearance Argentina | -- | -- | -- | -- | 3 | 5 | 8 |
| Disappearance Uruguay | -- | -- | -- | 2 | 1 | 12 | 15 |
| Arrest - Uruguay | 11 | 2 | -- | 29 | 27 | 8 | 77 |
| TOTAL | 11 | 2 | 0 | 31 | 31 | 25 | 100 |

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II. NOTES ON METHODOLOGY

a. It should be noted that the walk-in cases brought to the Embassy do not represent a random sampling of Uruguay's political detainees. Rather, they probably overstate the level of harshness experienced by the average detainee. Relatives are more likely to have recourse to the Embassy in cases where there are greater extremes of prisoner mistreatment, lack of responsiveness by the legal system and longer sentences, so that our sample is undoubtedly skewed against the GOU. Although the raw figures are of course accurate, generalizations through percentages to the general prisoner population are likely to be erroneous. This is especially true of smaller sub-samples (e.g., the percentage of sentenced prisoners who have been held past their release date). Although this study occasionally uses percentages, it does so only to describe the Embassy's sample, not the entire population of political prisoners.

b. The data analyzed here was gathered from relatives of prisoners and "disappeared" persons over a seven-month period ending in mid-May. Although every effort has been made to keep the information current, a small part of it is inevitably some six months out of date.

c. All dates used in the charts are dates of arrest or disappearance and have no reference to when alleged terrorist activities occurred. This is an analysis of GOU handling of accused subversives, not of subversive activity itself.

d. Although information on arrests, disappearances, etc., occurring in 1978 is included in the text, it is not included in the Charts because only three late-March cases have been reported. However, a special section detailing the Embassy's experience with 1978 cases has been included and reference is made to 1978 cases in other sections, as appropriate.

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III. POLITICAL AFFILIATION OF CASE SUBJECTS

Chart 2, below, gives a breakdown of cases by verified or admitted political affiliation. No attempt has been made to evaluate the extent of involvement or meaningfulness of the individual's membership in a given group. Some, particularly among PCU, PSU and Frente Amplio affiliates, appear to have been merely nominal members or low-level pamphleteers.

Communist Party (PCU) membership accounts for almost half of all cases (46%), perhaps because the PCU leadership have advised members to bring their cases to the Embassy. Next highest, at 18%, are persons of no known or admitted political affiliation or activity. Members of the far-left umbrella organizations FIDEL and the Frente Amplio, both legal at the time of their peak activity (1966 and 1971 respectively) rank third with 11%. Tupamaro (MLN) cases account for 8%, with almost none arising after 1973.

Each case was assigned only one category, with persons belonging to two organizations being placed in the more narrow category, i.e., closer to the top of Chart 2. Thus, if a person was a member of the PCU and the Frente Amplio, he was classified as PCU.

CHART 2 - Political Affiliation of Detainees by
Year of Arrest or Disappearance

| <u>AFFILIATION</u> | <u>1972</u> | <u>1973</u> | <u>1974</u> | <u>1975</u> | <u>1976</u> | <u>1977</u> | <u>TOTAL</u> |
|--------------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| MLN | 6 | -- | -- | 1 | 1 | -- | 8 |
| GAU | -- | -- | -- | -- | 1 | 2 | 3 |
| PCU-UJC | 1 | -- | -- | 24 | 16 | 5 | 46 |
| PSU | -- | 1 | -- | -- | -- | 2 | 3 |
| FRENTE/FIDEL | 2 | -- | -- | 3 | 1 | 5 | 11 |
| Other Subv. | 1 | 1 | -- | 2 | 2 | -- | 6 |
| Trade Union | 1 | -- | -- | -- | 4 | -- | 5 |
| No Traces | -- | -- | -- | 1 | 6 | 11 | 18 |
| TOTAL | 11 | 2 | 0 | 31 | 31 | 25 | 100 |

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MLN(Tupamaros) - Movimiento de Liberación Nacional
 GAU - Grupos de Acción Unificadora
 PCU - Partido Comunista Uruguayo
 UJC - Unión Juventud Comunista
 PSU - Partido Socialista de Uruguay
 FRENTE - Frente Amplio
 FIDEL - Frente Izquierdista de Liberación

This breakdown of cases by affiliation, with almost all MLN cases originating in 1972 or earlier, a 1973-74 gap, and heavy arrests of communists and others 1975 to date further support the hypothesis of a two-campaign war against internal subversion in Uruguay.

IV. THE MILITARY LEGAL SYSTEM

a. The presumario

Under the Uruguayan military justice system, in which almost all subversive crimes are prosecuted, no specific charge is required before arrest. Rather, charges leading to an indictment are developed as a result of the preliminary investigation(presumario). In most of the walk-in cases involving an Uruguayan known to be under detention, the prisoner has already completed the presumario and been indicted for a specific crime. Chart 3, below, shows that only for 1977 arrests are there a substantial number of detainees who are still unindicted (although there are a few others, dating as far back as 1972).

CHART 3 - Legal Status of Individuals Known to be Under Arrest, by Year of Detention

| | <u>1972</u> | <u>1973</u> | <u>1974</u> | <u>1975</u> | <u>1976</u> | <u>1977</u> | <u>Total</u> |
|-------------------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| Indicted for: | | | | | | | |
| - asociación subversiva | 3 | 1 | -- | 14 | 14 | 1 | 33 |
| - asistencia | 2 | -- | -- | 10 | 10 | 1 | 23 |
| - Others or Unknown | 3 | 1 | -- | 3 | 2 | 1 | 10 |
| TOTAL INDICTED | 8 | 2 | 0 | 27 | 26 | 3 | 66 |

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CHART 3 Continued

| | <u>1972</u> | <u>1973</u> | <u>1974</u> | <u>1975</u> | <u>1976</u> | <u>1977</u> | <u>Total</u> |
|---------------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| Of which: | | | | | | | |
| - Sentenced | 8 | 2 | -- | 4 | 5 | -- | 19 |
| - Awaiting Sentence | -- | -- | -- | 19 | 16 | 3 | 38 |
| - Not Known | -- | -- | -- | 4 | 5 | -- | 9 |
| TOTAL INDICTED | 8 | 2 | 0 | 27 | 26 | - 3 | 66 |
| - Not Yet Indicted | 1 | -- | -- | 1 | -- | 5 | 7 |
| - Status Unknown | 2 | -- | -- | 1 | 1 | -- | 4 |
| TOTAL ARRESTED | 11 | 2 | -- | 29 | 27 | 8 | 77 |

The presumario period is the most dangerous time for a prisoner. He has been arrested by any one of the several GOU security forces, possibly on its own initiative and authority, and taken to either a military barracks or a National Intelligence Department (police) jail. He has not yet fully entered the justice system and the military Juez de Instrucción (indicting judge) with jurisdiction over the presumario process may not be aware of his arrest. Both the Uruguayan legal tradition and the exigencies of anti-subversive warfare place a premium on confessional evidence, hopefully implicating others, so that the incentive for mistreatment during this period is very high. In most cases where abuse has occurred, it happened during the presumario.

Another especially dangerous time is near the end of a prisoner's sentence, as his nominal release date approaches. This has its origin in the fact that currently-used Uruguayan subversive legal weapons were put into effect in anti-July 1973, after the war against the Tupamaros had substantially been won. The crimes of asociación subversiva (membership in a subversive organization), asistencia a la asociación (aiding such an organization), and the rarely-used asistencia a los asociados (aiding individual members) were used to prosecute the majority of post-1973 arrestees and carried sentences of, in the extreme case, up to 18 years.

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Prior to 1973, subversives were prosecuted on charges of armed robbery, kidnapping, possession of false documents, etc., or on weak anti-subversive charges such as "conspiracy against the Constitution", which, unless the subversive were simultaneously accused of armed violence, carried relatively short sentences. Thus Tupamaros who had only supported, but never actually participated in, a crime received sentences which are seriously inadequate by the harsher post-1973 standards. Some are now becoming eligible for release and here is where the personal danger lies. In some cases, rather than release the prisoner, GOU security forces have attempted to prove new, additional charges, which involves another round of interrogation similar to the presumario. In at least one case of this type, intense international protest probably saved a prisoner from severe mistreatment, although it has not prevented his being held "under investigation" past his release date.

The typical duration of the presumario, during which the prisoner is held incomunicado and no official notice of arrest is given even to his family, is two to three months. However, for a presumario to last more than five months is not uncommon. During this lengthy period of incomunicación the authorities even refuse to concede knowledge of the detainee, justifying the practice on security grounds. This practice probably accounts for most of the disappearances in Uruguay reported to the Embassy. The Uruguayan Constitution of 1967 requires that a presumario be completed within 48 hours, but even under the draconian Medidas Prontas de Seguridad (Emergency Security Measures) this was extended only to ten days.

b. The Trial and Sentence

Following the presumario, a prisoner is quickly moved to a more normal, comparatively modern detention center. At about this time the case is placed in the hands of a fiscal (prosecutor) under the authority of a juez de la primera instancia (trial judge). The prisoner now may select a private lawyer to defend him, or choose to be represented by a defensor oficial, of which there are four: two civilian lawyers and two military officers who are not lawyers. A number of walk-in cases have expressed satisfaction with the military defenders who, although they do not attempt to defeat the charges entirely, can be more successful in winning shorter sentences and other advantages. This is an important point since the accused in most cases has confessed his guilt and all that is at issue is the duration of sentence.

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The trial is conducted, according to Uruguayan legal tradition and its Napoleonic Code heritage, by written petition. The prisoner confronts the judge and prosecutor on only a few occasions, such as arraignment and reading of the verdict. In many cases, the sentence of the trial judge is harsher than that requested by the prosecutor. If, as in almost all cases, the sentence is longer than three years, it must be reviewed by the Supreme Military Tribunal (SMT), the highest court in the military justice system. In many cases, the SMT does not reaffirm or reduce the sentence, but increases it. This sequence of increasing sentences was a bitter frustration to many of the walk-ins.

The trial, according to the data summarized from walk-in cases, usually lasts more than two years. Only 25 percent of all cases known to be under arrest have been sentenced, and the figure for 1975-77 arrests is much lower. Of those indicted, fewer than 29 percent have been sentenced. Fewer still of the 1975-77 arrestees have received their final sentences from the SMT.

Data from walk-ins indicates that almost one-third of all prisoners are held past their presumed release date. This is probably an exaggeration because of the small, skewed sample. However, as noted above, it has normally occurred in cases of prisoners arrested prior to 1973.

V. PRISONER TREATMENT AND DISAPPEARANCES

Of all cases known to be under arrest, 61 percent were reported to have been mistreated by their captors. In our sample, this reached its height in 1975-76 and then fell abruptly to zero in 1977. Does this mean that prisoner mistreatment was halted in 1977? Probably not. The relatively high number of "disappeareds" in 1977 indicates, for the most part, prisoners arrested in Uruguay who are still in presumario, the period where most mistreatment occurs. In addition, there is a relatively high number of Uruguayans who have disappeared in Argentina. These persons are in an especially tenuous situation, because both the GOA and GOU can logically disclaim political responsibility. In the past, many of these Argentine "disappeareds" have surfaced after a few months in Uruguayan jails (and have therefore been recorded in this analysis as Uruguayan arrests). However, there are indications that fewer may be recovered now, for a variety of reasons, especially the relative ease of "losing" them versus the growing international political complications of "finding" them or admitting to security operations on foreign soil. In short, including the disappeared in estimating mistreatment, it is unlikely that 1977 differs significantly from 1975-76.

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CHART 4 - Prisoner Treatment and Disappearances

| <u>Treatment</u> | <u>1972</u> | <u>1973</u> | <u>1974</u> | <u>1975</u> | <u>1976</u> | <u>1977</u> | <u>TOTAL</u> |
|------------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| Satisfactory | 2 | 1 | --- | 6 | 5 | 2 | 16 |
| Unsatisfactory | 7 | 1 | --- | 20 | 19 | --- | 47 |
| Not Known | 2 | --- | --- | 3 | 3 | 6 | 14 |
| Disappeared | --- | --- | --- | 2 | 4 | 17 | 23 |
| TOTAL | 11 | 2 | 0 | 31 | 31 | 25 | <u>100</u> |

In contrast, as noted above, 1978 walk-ins suggest a significant improvement. Both arrests and disappearances have fallen substantially, to about 20 percent of last year's total on an annualized basis. Thus, there are signs of decreasing political pressure in this area, with a falling arrest rate and a sharp decline in the more sinister foreign disappearances.

VI. PROFILES BY YEARS

According to our walk-in sample, the following profiles can be drawn:

If one were arrested in 1972, there would be a more than even chance it was because of alleged Tupamaro activity. There would probably be an indictment for asociación subversiva or asistencia, indicating that indictment could not have occurred until after July 1973, when those crimes were established. If actually indicted (and it is not certain that one would have been), a sentence would almost certainly have been rendered by now. There is some probability that one would not have been released when the sentence was completed. It is probable that one would have been mistreated during imprisonment, although marginally less likely than for those arrested in 1975-76.

Relatively few persons were arrested in 1973-74.

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Arrests increased dramatically in 1975, especially among members of communist political organizations and activists in the Frente Amplio. Prisoners were charged with asociación subversiva or asistencia in the vast majority of cases, but relatively few have been sentenced (only 4 in our sample). Prisoner maltreatment was widespread, both to elicit confessions (more than 99% of those charged had confessed, almost always under duress), and to gain information on other possible subversives.

Prisoners arrested in 1976 were very similar to those of 1975, except that relatively fewer were tied to communist organizations. At this time, the GOU war against smaller, less well-organized subversive groups was at its height. Pro-communist unions were intervened, and their leadership harrassed or imprisoned. In 1976, too, appeared the first significant evidence of imprisonment of persons with little or no significant political activity, as the forced confessions of 1975 led GOU security forces far afield.

By 1977, the major campaign against communist organizations was over, as was intervention of the unions. More than 40% of the cases in our sample had no known political affiliation. As noted above, a high percentage of 1977 cases are still being held incommunicado, and what charges will be preferred against them is not known. Of those arrested and indicted, the charges which predominate (in about the same ratio as 1975-76) are asociación subversiva and asistencia. No prisoners arrested in 1977 have been sentenced yet, to our knowledge. Because of the high number of "disappeareds" and prisoners just emerging from presumario, we cannot positively characterize their treatment, although there are indications that it followed 1975-76 patterns.

VII. 1978 Walk-in Cases

Only three cases originating in 1978 have been reported to the Embassy through the walk-in program. By type of case, two were arrests and the third was a disappearance, with strong evidence that the prisoner is being held incommunicado by GOU security forces in the presumario phase of investigation. By political affiliation, one was a member of the Grupos de Acción Unificadora (GAU); one belonged to the minor-league Agrupaciones de Militantes Socialistas (AMS); and the third had no known history of political involvement. Because all three cases originated in March, no information on charges or possible sentences has been disseminated, although the arrest of one individual was announced in the local papers.

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Because U.S. involvement in human rights and the walk-in program itself are both well-known in Uruguay, we can reasonably assume that the decrease in cases is a good index of a decrease in overall arrests/disappearances. However, because of the vagaries of word-of-mouth news of the Embassy walk-in program, a sudden future surge of 1978 cases would not, in itself, confirm an increase in overall 1978 detention levels. At present, the level of walk-in cases stands at 20% of last year's (on an annualized basis), indicating a seeming slackening in the GOU's anti-subversive campaign.

VIII. COMMENT

Through the walk-in program, the Embassy has been exposed to concrete individual histories which reflect not only the worst abuses of the GOU anti-subversive campaign but also, recently, some indications of improvement.

On the negative side are: widespread mistreatment of prisoners; confinement (or disappearance) of persons without specific charges for months at a time; an interminable and unresponsive legal process combined with a policy of draconian sentences; an apparent casting about for persons to arrest, with meager justification and insufficient evidence; and the sinister disappearances of persons who sought refuge in Argentina.

On the positive side are: the military legal system's slow but steady progress through its caseload (which has already somewhat shortened the pre-sentence waiting period); an apparently declining arrest rate; and, most importantly, the apparent recognition in some GOU circles that its anti-subversion campaign is creating increasing resentment at home and unacceptable criticism abroad. Such advances as the recent opening of the Oficina Central de Información de Personas (OCIP) to answer foreign inquiries about Uruguayan political detainees and the recent ABA mission's frank dialogue with high-ranking GOU officials, are welcome hints of a change in orientation.

The apparent decline in arrests and disappearances in 1978 is a key factor. If it continues, this will offer some concrete evidence that the GOU is not only trying to change its public image through cooperation with visits, release of prisoner information and a softened position by its Foreign Ministry, but also may be moving to improve the reality behind the image.

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